

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TRAVELERS CASUALTY INSURANCE
COMPANY OF AMERICA,

Plaintiff,

-against-

LANDMARK AMERICAN INSURANCE
COMPANY,

Defendant.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 8/18/2023

1:22-cv-9838 (MKV)

ORDER

MARY KAY VYSKOCIL, United States District Judge:

This is an insurance coverage case in which Plaintiff Travelers seeks a declaratory judgment that Landmark is obligated to defend and indemnify the defendants in an underlying personal injury action pending in New York Supreme Court, Bronx County.

At a conference on May 23, 2023, Landmark represented that in March of 2023, it had agreed to defend one of the underlying defendants because it was listed as an additional insured under the Landmark policy. Landmark declined to defend the second defendant because it was not scheduled as an additional insured as required to entitle it to coverage. Travelers concurred with Landmark's representation and coverage position. Landmark also represented that it had agreed to permit current counsel, that is defending both defendants, to continue to defend the underlying litigation. The parties requested 30 days to finalize a settlement of defense costs. [See ECF No. 20.]

The Court subsequently held a conference with the parties on June 27, 2023. At that conference, the parties informed the Court that they had exchanged preliminary defense costs, and the Court proposed three ways to resolve the parties' dispute regarding the remaining indemnity claims. [See ECF No. 22.]

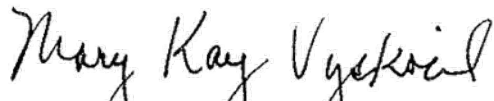
On July 18, 2023, the parties filed a joint letter reporting that “[t]he parties are in agreement as to the defense obligations” and that Travelers would “discontinue this declaratory judgment matter without prejudice once payment of the past defense invoices and the arrangement for the ongoing defense of Sajoma are finalized.” [ECF No. 23.] The Court directed the parties to file a status report within 30 days. [See ECF No. 24.]

The parties filed a status report on August 18, again reporting that they were “coordinating payment of the past defense invoices and . . . arrang[ing] the ongoing and continuing defense of Sajoma Office Management Inc.” [ECF No. 25.]

The Court requires clarification. The parties have repeatedly represented that they are in agreement with respect to the issue of defense costs but have neglected to finalize their negotiations and dismiss this action. Accordingly, it is HEREBY ORDERED, that on or before August 28, 2023, the parties must file a joint status report informing the Court that: (i) any issues with respect to defense costs will be finalized on or before September 25, 2023, (ii) Plaintiff will move for summary judgment with respect to any remaining defense cost issues on or before October 9, 2023, or (iii) reporting that the issues with respect to defense costs have been settled and dismissing this action. If the parties cannot reach agreement on one of these three options, Plaintiff is directed to file a letter showing cause why this case should not be dismissed for failure to prosecute, as the parties have repeatedly informed the Court that they are in the process of finalizing their settlement, and Plaintiff has otherwise taken no action to prosecute its case. *See Link v. Wabash R. Co.*, 370 U.S. 626, 633-34 (1962).

SO ORDERED.

Date: August 18, 2023
New York, NY



MARY KAY VYSKOCIL
United States District Judge